

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-202-G - ORDER NO. 2021-562
AUGUST 10, 2021

IN RE: Petition of Twin Chimneys Power Producers, LLC for Expedited Consideration and Issuance of a Declaratory Order)))))	ORDER GRANTING PETITION OF TWIN CHIMNEYS POWER PRODUCERS, LLC FOR EXEMPTION
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I. INTRODUCTION

Twin Chimneys Power Producers, LLC (Twin Chimneys) filed a petition seeking a declaratory order finding Twin Chimneys is exempt from regulation by the Commission for selling its landfill gas to one customer as set forth in the Petition. We grant the Petition and declare Twin Chimneys, under the specific factual circumstances of the project set forth in the Petition, is exempt from regulation by the Commission pursuant to South Carolina statutory law.

II. FACTS AND PROCEDURAL HISTORY

On June 17, 2021, Twin Chimneys filed a Petition seeking a declaratory order and expedited consideration establishing Twin Chimneys is exempt from Commission regulation for the project it proposes. According to the verified Petition, Twin Chimneys is a limited liability company organized under the laws of North Carolina and authorized to do business in South Carolina. Twin Chimneys also states that it operates a sanitary landfill as defined in section 44-96-40(44) of the South Carolina Code of Laws. Twin

Chimneys plans to install a facility to collect the landfill gas, which is a methane gas, remove the impurities, and construct a pipeline across a South Carolina Department of Transportation (SCDOT) right-of-way. Twin Chimneys states in its Petition: “SCDOT has informed [Twin Chimneys] that it will grant permission for such crossing, upon [Twin Chimneys] providing it with an Order from this Commission confirming that [Twin Chimneys] is exempt from regulation under S.C. Code § 58-5-35.”

Twin Chimneys, affiliated with Enerdyne Power Systems, Inc., a landfill gas project developer, entered into a long-term agreement with Greenville County to use landfill gas from the Twin Chimneys Landfill in Honea Path, South Carolina. Twin Chimneys has entered into a contract to sell the processed landfill gas to the Greenwood Commission of Public Works. Twin Chimneys represents in the Petition that the Greenwood Commission of Public Works is the only customer to which it will sell processed landfill gas from the landfill.

On June 28, 2021, the Office of Regulatory Staff (ORS) notified the Commission it did not object to the Commission approving the Petition of Twin Chimneys:

ORS has reviewed the Petitioner's Request and discussed the project with the Petitioner. As stated in the Request and in conversations with [Twin Chimneys], all of the processed LFG will be sold to a single customer, [Greenwood Commission of Public Works]. Based on its review, ORS does not object to the Commission's approval of Petitioner's Request.

On July 14, 2021, the Commission voted to grant Twin Chimneys' Petition, confirming the Twin Chimneys landfill gas project, as the project is described in the Petition, is exempt from regulation pursuant to section 58-3-35 of the South Carolina Code of Laws.

III. APPLICABLE LAW

The authority of the Commission to supervise and regulate the service of public utilities is clear:

The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every 'public utility' as herein defined.

S.C. Code Ann. § 58-5-210 (2015).

The Commission may consider a petition from a public utility or a pipeline company seeking a declaratory order to determine whether a particular statute applies to the petition:

Petitions may be submitted to the Commission for any relief, other than for an adjustment of rates and charges, which the Commission is empowered to grant under its statutory authority. Petitions which may be filed include: Petition for Rulemaking, Petition for a Declaratory Order, Petition to Intervene, Petition for Rehearing or Reconsideration, and Petition for a Rule to Show Cause.

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(2) A Petition for Declaratory Order to determine applicability of any statute or of any rule or order of the Commission shall state clearly and concisely:

- (a) A full disclosure of the petitioner's interest;
- (b) The uncertainty which is the subject of the petition;
- (c) The statutory provision or other authority involved;
- (d) A complete statement of the facts prompting the petition.

S.C. Code Ann. Regs. 103-825 (2012).

Of specific importance to the Petition in this docket, the selling of landfill gas derived from a sanitary landfill may be exempt from regulation by the Commission in certain circumstances: “Public utilities and pipeline companies engaged in the extraction, processing, distribution, or sale of landfill gas (LFG) derived from sanitary landfills, which provide this gas to no more than twenty customers from any single landfill, are exempt from regulation by the commission.” § 58-5-35 (2015). “The term ‘public utility’ includes every corporation and person delivering natural gas distributed or transported by pipe . . . to the public . . . for compensation . . .” § 58-5-10 (4). A landfill is defined in the South Carolina Code as “a disposal facility or part of a facility where solid waste is placed in or on land, and which is not a land treatment facility, a surface impoundment, or an injection well.” S.C. Code Ann. § 44-96-40 (22) (2018). A sanitary landfill is defined by the Code as “a land disposal site employing an engineered method of disposing of solid waste on land in a manner that minimizes environmental hazards and meets the design and operation requirements of this chapter [South Carolina Solid Waste Policy and Management Act of 1991].” S.C. Code Ann. § 44-96-40 (44) (2018).

IV. FINDINGS OF FACT

After review of the Petition and all of the evidence in the record, the Commission makes the following findings of fact:

1. Based upon the verified Petition, Twin Chimneys has a long-term agreement with Greenville County to use landfill gas from the Twin Chimneys Landfill in Honea Path, South Carolina.

2. Twin Chimneys has entered into an agreement to sell the processed landfill gas to the Greenwood Commission of Public Works.

3. Twin Chimneys is working with the SCDOT to distribute the processed landfill gas to the Greenwood Commission of Public Works.

4. ORS reviewed the Petition and has no objection to the Commission approving the request of Twin Chimneys set forth in its Petition.

V. CONCLUSIONS OF LAW

After review of the Petition and all of the evidence in the record, the Commission makes the following conclusion of law:

1. Under the specific facts of the projected sale of landfill gas to a single customer as proposed in the Petition, the proposal is exempt from regulation by the Commission pursuant to section 58-5-35 of the South Carolina Code of Laws (2015).

2. Any change in the circumstances of the sale of landfill gas by Twin Chimneys may render the sale of gas no longer exempt from regulation by the Commission and will require review by the Commission to determine the applicability of section 58-5-35.

IT IS THEREFORE ORDERED:

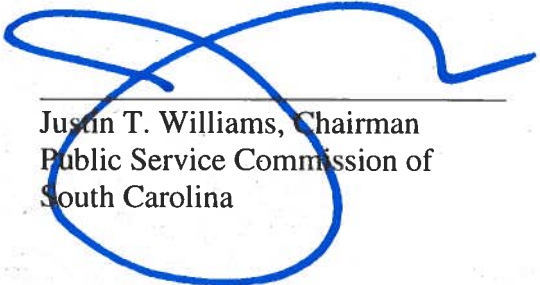
1. The Petition of Twin Chimneys is granted, based upon the specific circumstances set forth in the Petition.

2. The proposed project set forth in the Petition regarding Twin Chimneys' distribution of landfill gas from its sanitary landfill to a single customer, the Greenwood

Commission of Public Works, is exempt from Commission regulation pursuant to section 58-5-35 of the South Carolina Code of Laws.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina